

237846



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation on **March 20, 2003**

NOTICE OF ACTION TAKEN -- DOCKET OST-2003-14607-3

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Application of **MESA AIRLINES, INC.,** filed **2/25/03** and supplemented **3/4/03,** for:

XX Exemption for two years under 49 U.S.C. 40109 to provide the following service:

Scheduled foreign air transportation of persons, property, and mail between the terminal point Phoenix, Arizona, and the terminal point Guadalajara, Mexico. Mesa proposes to use the authority pursuant to a code share arrangement with America West Airlines, Inc., where America West will place its code on Mesa's flights in the market.^{1 2}

Applicant rep: **Brian S. Gillman (602) 685-4051** DOT Analyst: **Linda L. Lundell (202) 366-2336**

DISPOSITION

XX **Granted (subject to conditions, see conditions and remarks below)**

The authority granted was effective when taken: **March 20, 2003,** through **March 20, 2005.**

**Action taken by: Paul L. Gretch
Office of International Aviation**

XX **The authority granted is consistent with the aviation agreement between the United States and Mexico.**

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated: **XX** **Holder's certificate of public convenience and necessity**
XX **Standard Exemption Conditions (attached)**

Conditions: The U.S.-Mexico exemption authority granted is subject to the dormancy notice requirements set forth in condition 7 of Appendix A of Order 88-10-2.

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¹ Mesa currently operates the Phoenix-Guadalajara route pursuant to a code-share arrangement with America West using 50-seat CRJ Model aircraft (relying on economic authority under Part 298 of the Department's regulations for small aircraft operations). This application is necessitated by Mesa's proposal to use 64-seat CRJ Model 700 aircraft (or larger) in the subject market.

² In its supplement filed March 4, 2003, Mesa explains that its affiliate, Freedom Airlines, Inc., which recently received exemption authority to serve the Phoenix-Guadalajara market (see Notice of Action Taken dated February 26, 2003, in Docket OST-2003-14318), will use the authority on a temporary basis until Freedom's aircraft and certificate are transferred to Mesa.

Remarks: Mesa Airlines has previously been found to be a citizen of the United States and fit, willing and able to provide scheduled interstate and foreign charter air transportation of persons, property, and mail as a certificated air carrier under section 41102 of Title 49 U.S.C. (see Order 98-7-6). The foreign air transportation services authorized here are not markedly different in terms of aircraft size or stage length from the carrier's current operations under its existing certificate authority. We have found no reason to question the carrier's fitness to commence the services proposed here.

The code-share operations conducted under this authorization are subject to the following conditions:

- (a) The code-sharing operations conducted under this authority must comply with 14 CFR 257 and with any amendment to the Department's regulations concerning code-share arrangements that may be adopted. Notwithstanding any provisions in the contract between the carriers, our approval here is expressly conditioned upon the requirements that the subject foreign air transportation be sold in the name of the carrier holding out such service in computer reservation systems and elsewhere; that the carrier selling such transportation (*i.e.*, the carrier shown on the ticket) accept responsibility for the entirety of the code-share journey for all obligations established in its contract of carriage with the passenger; and that the passenger liability of the operating carrier be unaffected; and
- (b) The authority granted here is specifically conditioned so that neither Mesa nor America West shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.

On the basis of data officially noticeable under Rule 24(g) of the Department's regulations, we found the applicant qualified to provide the services authorized.

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) our action was consistent with Department policy; (2) grant of the application was consistent with the public interest; and (3) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR §385.30, may file their petitions within seven (7) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

An electronic version of this document is available on the World Wide Web at:
http://dms.dot.gov/reports/reports_aviation.asp

U.S. CARRIER
Standard Exemption Conditions

In the conduct of operations authorized by the attached notice, the applicant(s) shall:

- (1) Hold at all times effective operating authority from the government of each country served;
- (2) Comply with applicable requirements concerning oversales contained in 14 CFR 250 (for scheduled operations, if authorized);
- (3) Comply with the requirements for reporting data contained in 14 CFR 241;
- (4) Comply with requirements for minimum insurance coverage, and for certifying that coverage to the Department, contained in 14 CFR 205;
- (5) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (6) Comply with the applicable requirements of the Federal Aviation Administration Regulations and with all applicable U.S. Government requirements concerning security;³ and
- (7) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department of Transportation, with all applicable orders and regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

The authority granted shall be effective only during the period when the holder is in compliance with the conditions imposed above.

10/2002

³ To assure compliance with all applicable U.S. Government requirements concerning security, the holder should, before commencing any new service (including charter flights) to or from a foreign airport, inform its Principal Security Inspector of its plans.